



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

APR 15 2010

OFFICE OF PETITIONS

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

| | | |
|---------------------------------|---|-------------------------|
| In re Patent of Cohen et al. | : | DECISION ON REQUEST |
| Patent No. 7,588,545 | : | FOR RECONSIDERATION OF |
| Issue Date: September 15, 2009 | : | PATENT TERM ADJUSTMENT |
| Application No. 10/658,261 | : | AND NOTICE OF INTENT TO |
| Filing Date: September 10, 2003 | : | ISSUE CERTIFICATE OF |
| Attorney Docket No. 06530.0307 | : | CORRECTION |

This is a decision on the petition filed November 13, 2009, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting that the patent term adjustment indicated on the patent be corrected to indicate that the term of the patent is extended or adjusted by one thousand two hundred thirty-two (1232) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by one thousand two hundred thirty-two (1232) days is **GRANTED to the extent indicated herein.**

Patentees contend the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") is 572 days.

Pursuant to 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include any time period consumed by continued examination. Although Patentees recognized the need to exclude a time period due to the RCE, Patentees failed to exclude the actual date the RCE was filed from the period of B Delay. Once the date the RCE was filed is removed from the period of B Delay, the period of B Delay is 571 days, not 572 days.

Patentees contend, and the Office agrees, the period of overlap between delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and B Delay is 184 days.

Patentees contend the total period of patent term adjustment is 1,232 days. However, the sum of 863 days of A Delay and 571 days of B Delay reduced by 184 days of overlap and 9 days of Applicant Delay is 1,241 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**,

whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **one thousand two hundred forty-one (1,241)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

A handwritten signature in black ink, appearing to read 'C. S. Brantley', written in a cursive style.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

**UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION**

PATENT NO. : 7,588,545 B2

ISSUE DATE : September 15, 2009

DRAFT

INVENTOR(S) : Cohen et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 854 days.

Delete the phrase "by 854 days" and insert - by 1241 days--